

2600 Fresno Street, Third Floor

Historic Preservation Commission Agenda

MOLLY LM SMITH
Chair
DON SIMMONS, Vice Chair

Commission Members
PATRICK BOYD
SALLY CAGLIA
TERESA ESPAÑA, M.A.
CHRISTOPHER JOHNSON AIA
JOE MOORE

CRAIG SCHARTON, M.S.
Assistant Director

KARANA HATTERSLEY-DRAYTON, M.A.
Secretary
Historic Preservation Project Manager

WILL TACKETT, Planner III

Any interested person may appear at the public hearing and present written testimony, or speak in favor or against the matters scheduled on the agenda.

If you challenge these matters in court, you may be limited to raising only those issues you or someone else raised in oral or written testimony at or before the close of the hearing.

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices, or translators should be made one week prior to the meeting. Please call the Historic Preservation Project Manager at 621-8520.

The Historic Preservation Commission welcomes you to this meeting.

July 25, 2011

MONDAY

5:30 p.m.

City Hall, Second Floor, CONFERENCE ROOM A, 2600 FRESNO STREET

I. CALL TO ORDER AND ROLL CALL

II. APPROVE MEETING MINUTES

A . No minutes are available for review.

III. APPROVE AGENDA

IV. CONSENT CALENDAR

V. CONTINUED MATTERS

VI. COMMISSION ITEMS

- A. Update on Status of Relocation and Rehabilitation of the Armenian Town Houses (and Summer Kitchen) Pursuant to FMC 12-1606 (RDA Staff).

Staff Recommendation: Receive Status Report. No Action is Required.

- B. Review and Provide Comments on the *Draft Policy and Procedures Manual for Enforcing the Historic Preservation Ordinance* Pursuant to FMC 12-1626.

Staff Recommendation: Review Report and Provide Comments.

- C. Status Report on Condition of the José Garcia (Brewer) Adobe (HP#227) Located at 5901 West Shaw Avenue Pursuant to FMC 12-1606(2)(23) and 12-1626.

Staff Recommendation: Receive Status Report. No Action is Required.

- D. Section 106 of the National Historic Preservation Act: What is it and How Does it Differ from CEQA?

1. Protocols for Federally Funded Reviews Pursuant to Section 106 of the National Historic Preservation Act and Its Implementing Regulations, Title 36, Part 800 of the Code of Federal Regulations.

- a) Senior Paint, Minor Rehabs and Lead Paint Grant Projects Reviewed Under the City's Certified Local Government (CLG) Agreement.

2. Section 106 Evaluations That Require(d) SHPO Review:

- a) Historic Property Survey Report for the California Products Company Site, 3000 E. Butler Avenue, Fresno, 27 August 2010.

- b) Historic Property Survey Report for the Renaissance at Santa Clara Residential Development Project, Fresno, 4 February 2011.

- 1) Programmatic Agreement with the SHPO and the Advisory Council on Historic Preservation for Sub-Surface Deposits.

- c) Section 106 Evaluation and Historic Property Survey Report for the Hotel Fresno, 1257 Broadway, Fresno, 18 March 2011.

- d) Historic Property Survey Report for the Lowell Development Project, 415 N. Calaveras Street, Fresno, 9 June 2011.

- e) Section 106 Evaluation and Historic Property Survey Report for the Droge Building 802 Van Ness Avenue, Fresno 8 July 2011. (Revised from December 2, 2010)

Staff Recommendation: This Agenda Item is Informational. No Action Is Required.

VII. CHAIRPERSON'S REPORT

VIII. UNSCHEDULED ITEMS

A. Members of the Commission

B. Staff

1. Status of Staff Support, Recording Secretary to the HPC.
2. HPC Annual Report.

C. General Public

IX. NEXT REGULAR MEETING: August 25, 2011, Fresno City Hall, Conference Room A.

X. ADJOURNMENT



REPORT TO THE HISTORIC PRESERVATION COMMISSION

AGENDA ITEM NO. VIB
HPC MEETING: 07/25/2011

July 25, 2011

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management Department

APPROVED BY

DEPARTMENT DIRECTOR

BY: KARANA HATTERSLEY-DRAYTON
Secretary
Historic Preservation Project Manager

SUBJECT: REVIEW AND PROVIDE COMMENTS ON THE DRAFT POLICY AND PROCEDURES
MANUAL FOR ENFORCING THE HISTORIC PRESERVATION ORDINANCE
PURSUANT TO FMC 12-1626.

RECOMMENDATION

Staff recommends that the Commission review and provide comments on the attached draft *Policy and Procedures Manual for Enforcing the Historic Preservation Ordinance* pursuant to FMC 12-1626.

EXECUTIVE SUMMARY

In response to a request from the Historic Preservation Commission at its June 23, 2008 meeting, staff from the City Attorney's Office and the Historic Preservation Project Manager met and prepared a draft Procedures Manual for implementation of the City's Minimum Maintenance provisions of the Historic Preservation Ordinance (FMC 12-1626). Although penalties of up to \$10,000 for violations of the Ordinance are referenced (FMC 12-1628), the actual implementation procedures and protocol for issuing penalties are not explicit. In developing this manual, City attorney staff recognized that the permit section of the Historic Preservation Ordinance also needed to be addressed. Therefore a draft Procedures Manual which incorporated protocols both for permits (FMC 12-1617, 1618 and 1619) as well as the sections which specifically address "Minimum Maintenance" of historic properties (12-1626 and 12-1628) was presented to the Commission for comment and review on January 26, 2010.

The intent of the Manual is to meld already adopted statutes as found in the Historic Preservation Ordinance with Code Enforcement protocols and procedures. Other than providing a more explicit connection between the two sections of the Fresno Municipal Code (FMC 1 and 12-1600) the only new provision is a graduated fee schedule that was developed for infractions of the Historic Preservation Ordinance. Prior to adoption, the City's Master Fee schedule will need to be revised by the City Council to reflect this fine structure.

BACKGROUND

Pursuant to FMC 12-1617(a), 12-1618(a) and 12-1619(a), it is unlawful for a property owner to "directly or indirectly alter, remodel, demolish, grade, remove, construct, reconstruct or restore" a designated historic property without first obtaining a city permit and the written approval of the Historic Preservation Commission. Likewise, under the Ordinance's Minimum Maintenance provisions, historic property owners are required to maintain their properties and to preserve them against decay and deterioration (FMC 12-1626). FMC 12-1628 notes that penalties for violations of the HPO may be "up to \$10,000 for each violation." Alternatively, violators "may be required to reasonably restore the building, structure,

object or site to its appearance or condition prior to the violation, under the guidance of the Development Department.”

Over the past several years the Historic Preservation Commission has taken action to enforce these sections of the Ordinance. As examples, pursuant to 12-1626(c), staff has been directed to meet with errant property owners regarding the status of a property and/or the Commission has requested that the property owner appear before the Commission. The Commission has also required that a property owner restore a designated historic building to its appearance prior to the particular violation or infraction. In severe cases the Commission has also, pursuant to 12-1626(c) made a formal request “that the Development Department or other appropriate department or agency take action to require corrections of defects in the subject Resource...” For example, at its January 25, 2010 meeting the HPC requested that the Code Enforcement Division of the Planning and Development Department take action to enforce the Historic Preservation Ordinance as regards to the Helm Home and the Newman Home.

It should be noted that there can be infractions of the Historic Preservation Ordinance which will not trigger a code or building code violation. For example, if a property owner removes character defining features, such as the decorative balustrade on a Queen Anne cottage, he/she would be in violation of the Historic Preservation Ordinance only. This special area of “infractions” is an additional reason why a specific Policy Manual for historic properties is important.

The revised Procedures Manual (as attached) incorporates recommendations made by the public and Commissioners at the January 26, 2010 meeting. The attached draft Manual has been reviewed by the attorney for the Community Revitalization Division and is supported by Department staff, as a useful policy manual which links the two sections of the Fresno Municipal Code, “Code Violations” and the Historic Preservation Ordinance. In addition, the draft Manual includes a graduated fine schedule for violations of the Historic Preservation Ordinance. The Policy Manual does not shift the enforcement of the Ordinance to the Commission, other than those provisions already included under FMC 12-1626(c) such as Courtesy Notices and requested meetings with a property owner, which may never entail support from “code” staff. The Commission and Historic Preservation staff will, however, work collaboratively with Community Revitalization staff on evaluating and assessing the penalties for infractions.

Following adoption of the Policy and Procedures Manual by the Commission the graduated fine structure for infractions of the Historic Preservation Ordinance will be submitted to the City Council for approval as an amendment to the City’s Master Fee schedule.

Attachments: Exhibit A - “Policy and Procedures Manual for Enforcing the Historic Preservation Ordinance of the City of Fresno” (revised 19 July 2011).

**POLICY AND PROCEDURES MANUAL FOR ENFORCING THE
HISTORIC PRESERVATION ORDINANCE OF THE CITY OF
FRESNO
FMC § 12-1601 et seq.**

TABLE OF CONTENTS

I. INTRODUCTION	2
II. UNDERSTANDING THE ORDINANCE	
a. INTENT	2
b. PURPOSE	2
c. VIOLATIONS	3
d. PENALTIES	5
III. ENFORCING THE ORDINANCE	
a. CONTACT AND DISCUSSION	6
b. COURTESY NOTICE	6
c. NOTICE AND ORDER	7
d. CITATION	8
e. APPEAL	10
IV. APPENDIX	
a. FORM – Courtesy Notice	13
b. FORM – Notice and Order	15
c. FORM – Citation	18
d. FORM – Suggested Appeal	21
e. TABLE – Referenced Code Sections	23

REVISED DRAFT 7.21.11

**Historic Preservation Ordinance of the City of Fresno
FMC § 12-1601 et seq.**

HISTORIC PRESERVATION COMMISSION ENFORCEMENT

I. INTRODUCTION

The purpose of this policy and procedures manual is to detail the administration and enforcement of Fresno Municipal Code section 12-1601 et. seq., collectively known as the Historic Preservation Ordinance of the City of Fresno. Section two of this manual provides a basic understanding of the ordinance. Section two is useful when answering questions about the ordinance such as, "what constitutes a violation," or "what is the cost of a citation." Section three of this manual details the procedures to be followed when enforcing the ordinance. Section three should be used when there are questions such as, "when can the second citation be issued," or "what information should be included in a Notice and Order". Section four of this manual provides forms to be used as templates when implementing enforcement procedures for violations.

As the Dangerous and Vacant Building ordinances deal with similar conditions, the Historic Preservation Commission and its staff will work in tandem with Code Enforcement personnel as necessary to meet the objectives of the Historic Preservation Ordinance.

II. UNDERSTANDING THE ORDINANCE

A. INTENT

The intent of the Historic Preservation Ordinance of the City of Fresno is to maintain the distinctive and significant character of the City by protecting and enhancing Fresno's historic, architectural, aesthetic and cultural heritage and by preventing unnecessary injury or destruction of Fresno's historic resources and districts which are community assets. [FMC § 12-1602(b)].

B. PURPOSE

1. Preserve, promote and improve the historic resources and districts of the city of Fresno for educational, cultural, economic and general welfare of the public. [FMC § 12-1602(a)]

2. Continue to protect and review changes to the resource and districts which have a distinctive character or a special historic, architectural, aesthetic or cultural value to this city, state and nation. [FMC § 12-1602(a)]
3. Continue to safeguard the heritage of this city by preserving and regulating its historic, social, economic, political and architectural history. [FMC § 12-1602(a)]
4. To continue to preserve and enhance the environmental quality and safety of these landmarks and districts. [FMC § 12-1602(a)]
5. To continue to establish, stabilize and improve property values and to foster economic development. [FMC § 12-1602(a)]

C. VIOLATIONS (N.B. *Violations of the Historic Preservation Ordinance are not always violations of other statutes and codes. For example, a change to “character defining features” such as the architectural detailing on a Queen Anne cottage would not normally be cited as a code or building violation.*)

Violation of *any portion* of the Historic Preservation Ordinance may be enforced by the procedures herein detailed. Though any section of the ordinance may be enforced, a majority of violations are expected to encompass work without permits, work without approval of the Commission and violations of the minimum maintenance standards. The following code sections are likely to be the subject of most enforcement actions. The list is not exclusive.

6. It shall be unlawful for any person, corporation, association, partnership or other legal entity to directly or indirectly alter, remodel, demolish, grade, remove, construct, reconstruct or restore any Historic Resource without first obtaining a city permit and the written approval of the Historic Preservation Commission. [FMC § 12-1617(a)]
7. It shall be unlawful for any person, corporation, association, partnership or other legal entity to directly or indirectly alter, remodel, demolish, grade, remove, construct, reconstruct or restore any property within any Historic District without first obtaining a city permit, review by the appropriate Design Review Committee and the written approval of the Historic Preservation Commission. [FMC § 12-1618(a)]

8. It shall be unlawful for any person, corporation, association, partnership or other legal entity to directly or indirectly alter, remodel, demolish, grade, remove, construct, reconstruct or restore the Heritage Property without first obtaining a city permit and the written approval of the Historic Preservation Commission. [FMC § 12-1619(a)]
9. All designated Historic Resources including Contributors to any Historic District shall be preserved against decay and deterioration, kept in a state of good repair and free from structural defects. This section is meant to prevent an owner or person with legal custody and control from facilitating demolition of a Historic Resource by neglecting it and by permitting damage to it by weather and vandalism. [FMC § 12-1626(a)]
10. Consistent with all other state and city codes requiring that buildings and structures be kept in good repair, the owner or other person having legal custody and control of a property shall repair such building or structure if it is found to have any of the following defects:
 - A. Building elements so attached that they may fall and injure members of the public or property.
 - B. Deteriorated or inadequate foundation.
 - C. Defective or deteriorated flooring.
 - D. Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration.
 - E. Members of ceilings, roofs, ceiling or roof supports or other horizontal members which sag, split or buckle due to defective materials or deterioration.
 - F. Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration.
 - G. Deteriorated, crumbling or loose exterior plaster.
 - H. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors.

- I. Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- J. Any fault, defect or deterioration in the building which renders it structurally unsafe or not properly watertight.
[FMC § 12-1626(b)]

11. It shall be unlawful for any person to permit or maintain violations of any of the provisions of this article by undertaking the alteration, grading, removal, demolition or partial demolition of an Historic Resource or a building, structure, object or site within a Historic District without first obtaining the written approval of the Specialist, Commission or Council as provided in this article, or to defy any order or decision rendered by the Specialist, Commission or Council. [FMC § 12-1628]

D. PENALTIES

Any violations of this article may be enforced as provided in the Fresno Municipal Code, except in the case of administrative citations issued pursuant to this Ordinance, wherein the administrative penalty imposed shall be up to \$10,000 for each violation. As part of any enforcement proceeding, violators may be required to reasonably restore the building, structure, object or site to its appearance or condition prior to the violation, under the guidance of the Development Department. [FMC § 12-1628]

- 1. First violation within a rolling twelve-month period.
 - a. \$300 for failure to obtain a permit for minor work, for which the building sustained no alterations that cannot be reversed. (example: Failure to obtain a roof permit).
 - b. \$1,000 for failure to obtain a permit and commission approval for major work, such as alterations to the façade or additions to the rear elevation of a building.
 - c. \$1,000 for violations of section 12-1626 (1-10). Fines may be imposed for each violation of this section or grouped together under one fine, according to the severity of the situation.
 - d. \$10,000 for demolition of a designated historic building, or actions which lead to its demolition through neglect.

2. Second occurrence of the same violation within a rolling twelve-month period.
 - a. \$500 for failure to obtain a permit for minor work, as above.
 - b. \$2,000 for failure to obtain a permit and Commission approval for major work, such as alterations to the façade or additions to the rear elevation.
 - c. \$2,000 for each violation of section 12-1626 (1-10).
3. Third or subsequent occurrence of the same violation within a rolling twelve-month period.
 - a. \$1,000 for failure to obtain a permit as required.
 - b. \$2,000-\$10,000 for each violation of section 12-1626 (1-10).

DI. ENFORCING THE ORDINANCE

Except as otherwise indicated, the timeframe for abatement of violations of this article are based on a reasonable amount of time considering the nature and severity of the violation, as determined by the enforcement officer. The Commission shall work with the Community Revitalization Department, who shall have enforcement authority.

i. Contact and discussion [FMC 12-1626(c)]

1. If the Commission has reason to believe that a violation of the Historic Preservation Ordinance has occurred or is underway, it shall direct staff to meet with the owner or other person having legal custody and control of the Resource, to discuss ways to abate the violation.
2. Contact with the owner or person with legal custody and control shall be memorialized in a Historic Preservation Commission Courtesy Notice.

ii. Courtesy Notice (see appendix “A” on page 11)

The Courtesy Notice should be prepared **by the staff to the Historic Preservation Commission** immediately following the first contact with the owner or person with legal custody and control.

1. The Courtesy Notice should include:

- a. The location of the property.
- b. A reference to the public hearing in which the Commission discussed the violations.
- c. Reference to all code sections violated with a brief description of how the sections were violated.
- d. Remedies which have been suggested by the Commission.
- e. A suggested time frame within which the violation is to be abated.
- f. A notice that if the violations continue un-abated then enforcement action will be initiated which could include fines of up to \$10,000 per violation.

2. The Courtesy Notice shall be served by First Class mail on the property owner at the address listed on the latest tax assessment role. The Courtesy Notice should also be served to any occupant, tenant, lessee, or any other known holder of any possessory interest in the property.

3. If no attempt or insufficient effort is made to correct the violation(s) the Commission may, at a noticed public hearing, make a formal request that the Development Department or other appropriate department or agency consult about actions that can be taken to correct defects in the subject Resource in a manner which the Resource may be preserved in accordance with this article.

iii. **Notice and Order** (see appendix "B" on page 13)

After expiration of the Courtesy Notice and upon direction by the Commission after a public hearing, staff may request that Community Revitalization staff issue a written warning in the form of a Notice and Order to the property owner within a reasonable period of time after the Commission decision.

1. The Notice and Order should include:

- a. The location of the property
- b. Reference to all code sections violated together with a brief description of how the sections were violated.
- c. Suggested remedies.

- d. A prescribed time frame within which the violation is to be abated.
 - e. A warning of the enforcement actions (administrative citation or judicial action) that will be pursued if violation(s) are not remedied within the prescribed time frame.
 - f. A statement that any person having any interest in the property may appeal from the notice and order provided the appeal is made in accordance with the provisions of Chapter 1, Article 4.
 - 2. The Notice and Order shall be served on the property owner by both certified and first class mail at the address listed on the latest tax assessment role. The Notice and Order should also be served by both certified and first class mail to any occupant, tenant, lessee, or any other known holder of any possessory interest in the property.
- iv. **Citation** (see appendix "C" on page 16)
- If there has been no compliance with a Notice and Order or a previously issued citation, staff may request that Community Revitalization staff issue the first, or subsequent, citation after the expiration the previous document.
- 1. Contents.
 - a. Date and location of the violation(s), including the street address, if any, and the approximate time the violation(s) were observed. [FMC § 1-308(b)(1)]
 - b. Section(s) of the Code violated and a brief description of how the section(s) was violated. [FMC § 1-308(b)(2)]
 - c. Description of the action required to correct the violation(s), if applicable; and if applicable, the date by which the violation must be corrected. [FMC § 1-308(b)(3)]
 - d. Statement explaining the consequences of failure to correct the violation(s). [FMC § 1-308(b)(4)]
 - e. Amount of penalty imposed for the violation(s). [FMC § 1-308(b)(5)]

- f. Explanation of how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty. [FMC § 1-308(b)(6)]
- g. Right to contest the contents of the administrative citation and right of appeal, including the name and address of the City Manager for purposes of filing any notice of appeal. [FMC § 1-308(b)(7)]
- h. Signature of the enforcement officer. [FMC § 1-308(b)(8)]

2. ISSUANCE

- a. The administrative citation shall be mailed to the property owner(s). by certified and first class mail. The failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this chapter. Notice by certified and first class mail in the manner described above shall become effective on the date of mailing. [FMC § 1-308(d)]
- b. Failure to Correct. If the violator or property owner fails to correct the violation, subsequent administrative citations and penalties may be issued for the same violation(s) or the city may institute any other applicable action permissible under this Code to gain compliance. The amount of the penalty for each subsequent violation of the same Code provision shall increase at a rate specified in this article (see "Penalties," section 2(D) of this manual). [FMC §§ 1-308(h) and 12-1628]
- c. Payment of Fine Without Correction of Violation. Payment of any penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city. [FMC § 1-308(i)]
- d. Late Fee. The failure of any person to pay any penalty assessed by administrative citation within the time specified on the administrative citation shall result in the assessment of an additional late fee to be charged. The amount of the late fee shall be ten percent of the total amount of the civil penalty due and owing. [FMC § 1-308(i)]
- e. Collection of Penalty. The city shall collect delinquent fines under the provisions of the Cost and Penalty Recovery

Ordinance in Chapter 1, Article 5 of the Code. [FMC § 1-308(j)]

- f. Authority to Issue Administrative Citation. The Planning and Development Director and any other person delegated by the Director may issue administrative citations. [FMC § 1-308(k)]
- g. Payment of Penalty and Use of Proceeds. Except as otherwise provided, all civil penalties assessed shall be payable to the City. [FMC § 1-308(l)]

E. APPEAL (see appendix "D" on page 19)

- 1. Any person issued an administrative citation may contest the contents of the administrative citation by filing an appeal under the City's Administrative Ordinance set forth in Article 4. If no appeal is filed within the time prescribed, the penalty shall be final and immediately payable. [FMC § 1-308(f)]
- 2. Notice of Appeal. A notice of appeal shall be filed in writing in duplicate with the hearing officer within eighteen calendar days after the service of the order, citation, decision, or determination appealed from. [FMC § 1-407(b)]. The appeal shall be addressed to the hearing officer and shall contain the following:
 - a. The name, address, and telephone numbers of the appellant;
 - b. A statement describing the appellant's legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from;
 - c. A brief description of the specific order, citation, decision, or determination being appealed;
 - d. A statement of the relief sought;
 - e. The reasons why such relief should be granted;
 - f. A statement of the Appellant, "under penalty of perjury," that the facts stated in the appeal are true of the appellant's own knowledge, except as to matters which are not within the appellant's knowledge and are not of public record, and as to

those matters that the appellant believes the facts stated to be true.

3. Late Appeals. Upon a showing of good cause, the hearing officer may, in his or her discretion, permit the filing of an appeal, or an amended appeal, after eighteen calendar days, in which case the appeal shall be considered in the same manner as if it had been timely filed. [FMC § 1-407(c)]
4. Stay of Proceedings. Unless otherwise provided by this Code, the filing of an appeal shall stay all proceedings in furtherance of the order, citation, decision, or determination appealed from until the determination of the appeal as provided herein. [FMC § 1-407(f)]
5. Hearing Packet. Upon receipt of the copy of the notice of appeal from the hearing officer, the employee or officer who issued the citation shall prepare a hearing packet that forms the basis of the citation. The hearing packet shall be served either within seven calendar days (if service is by mail) or five calendar days (if personally served on the appellant) of the date set for the hearing. [FMC § 1-407(g)]

APPENDIX A

Courtesy Notice



Historic Preservation Commission

[Insert Chairpersons Name Here]

Chairman

[Return Address]

[Return Address Continued]

[Return Address Continued]

COURTESY NOTICE

[Prop Owner Name]

[Prop Owner Address]

[Prop Owner Address cont]

Re: *[Address in violation]*

Dear Property Owner:

Fresno Municipal Code Chapter 12, Article 16 is known as the Historic Preservation Ordinance of the City of Fresno. The Ordinance sets forth requirements that must be met when dealing with historic resources, local historic properties and districts, nationally registered historic properties and districts, heritage properties and contributors to historic districts.

On *[insert date of contact]* a representative of the Historic Preservation Commission contacted you regarding violations of the Historical Preservation Ordinance located at *[insert address in violation]*. During the conversation the following violations and remedies were discussed:

[Insert details of conversation including the violations w/FMC section and the remedies proposed]

We are asking your cooperation in eliminating the above mentioned violations by *[insert reasonable date of compliance]*. Please take note that if the violations remain beyond the aforementioned date, the Historic Preservation Commission will seek compliance through an administrative citation process. Fresno Municipal Code allows administrative citations up to \$10,000 per violation of the Historic Preservation Ordinance.

For additional information or assistance in addressing these issues please contact *[insert name and contact information here]*. Thank you for helping to maintain the distinctive and significant character of the City.

Sincerely,

[name]

[Title]

Historic Preservation Commission

APPENDIX B

Notice and Order

[Return Address]
[Return Address Continued]
[Return Address Continued]

NOTICE AND ORDER OF VIOLATION

[Prop Owner Name]
[Prop Owner Address]
[Prop Owner Address cont]

Re: [Address in violation]

Dear Property Owner:

Fresno Municipal Code Chapter 12, Article 16 is known as the Historic Preservation Ordinance of the City of Fresno. It sets forth requirements that must be met when dealing with historic resources, local historic properties and districts, nationally registered historic properties and districts, heritage properties and contributors to historic districts. It has come to the attention of this Historic Preservation Commission that the following activities have been occurring at [address or APN of violation] in violation of this ordinance:

1. [insert violation and corresponding FMC §]
2. [insert additional violation and corresponding FMC §]
3. [insert additional violation and corresponding FMC §]

The above violation(s) were observed on [insert date and approximate time violation(s) were observed; also include name of violator if known and appropriate]. Pursuant to Fresno Municipal Code section 12-1628, it is unlawful for any person to permit or maintain violations of any of the provisions of the Historic Preservation Ordinance of the City of Fresno. As such, you are hereby ordered to abate the violations mentioned herein on or before [insert reasonable compliance date].

It is suggested that abatement can be achieved by [insert suggested remedies. May include reasonable restoration of the building, structure, object or site to its appearance or condition prior to the violation, under the guidance of the Development Department].

Failure to abate the violations by the date listed above could result in the issuance of an administrative citation up to \$10,000 for each violation (FMC 12-1628). If a penalty is administered and not paid within 30 calendar days the City may seek collection through a collection agency, lien, property assessment and/or legal action (FMC 1-507).

Any person having any interest in the property may appeal from this Notice and Order in accordance with the provisions of Chapter 1, Article 4 of the Fresno Municipal Code. An appeal may be filed in writing with the City Manager's Office within fifteen (15) calendar days of this Notice and Order

being personally served or within eighteen (18) calendar days after the date this Notice and Order was mailed.

A copy of the Fresno Municipal Code can be reviewed online at www.fresno.gov by clicking on “Fresno Municipal Code” on the right side of the page under the heading, “Related Online Resources.”

For additional information or assistance in addressing these violations please contact [*insert name and contact information here*].

Sincerely,

[*name*]

[*Title*]

Historic Preservation Commission

APPENDIX C

CITATION

Historical Preservation Citation

Date:

Citation No:

Penalty Amount: \$

LOCATION OF VIOLATION(S):

[Address]

APN:

CITATION ISSUED TO:

[Name]

[Address]

DESCRIPTION OF VIOLATION(S):

Code §:	Date:	Time:	Violated by:
Description of how the code section was Violated:			
Code §:	Date:	Time:	Violated by:
Description of how the code section was Violated:			
Code §:	Date:	Time:	Violated by:
Description of how the code section was Violated:			

ABATEMENT: [provide a description of the action required to abate the violation(s)]. **The above-stated violation(s) must be corrected by [date].** Failure to correct the above-stated violations by the stated date may result in subsequent administrative citations with increasing penalties for the same violation(s) and/or further legal action.

PAYMENT: Payment of the penalty amount is due within thirty (30) calendar days of the date of this citation. Please remit payment to: [department] [address]. If you fail to pay these charges with thirty (30) calendar days, City code section 1-308(i) allows for a late citation payment fee of 10% to be assessed to your outstanding balance.

COLLECTIONS: PLEASE NOTE that should you fail to pay these charges in full within 30 calendar days of the date of this citation, the City may seek collection through any of the following means pursuant to Fresno Municipal Code section 1-507: (1) a collection agency; (2) a lien; (3) property assessment; and/or (4) legal action. Before a lien or special assessment would be placed on your property, an administrative hearing officer must confirm the costs following a public hearing. If a lien is pursued you will receive notice of the hearing at least fifteen (15) days prior to the date of the hearing and will be allowed to file an objection.

APPEAL: You have the right to contest this citation by filing a written appeal within fifteen (15) calendar days of being personally served with this citation or within eighteen (18) calendar days from the date this citation was mailed. You may file the appeal with the Hearing Officer at the Office of the City Manager, City of Fresno 2600 Fresno Street, Room 2064, Fresno, CA 93721.

ISSUING OFFICER: _____
[Name and Title]

PLEASE SUBMIT THIS PORTION WITH PAYMENT.

Submit Payment To:

[?]
Attn:[name]
[address]

Payment may be made by cash, check or money order.
Make Checks Payable to: City of Fresno

Citation Issued to: [Name] [Address] Location of Violation(s): [Address]	Citation No.: Penalty Amount: \$
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APPENDIX D

**SUGGESTED APPEAL
FORM**

SUGGESTED APPEAL FORM

Appeal of:

(Name)

(Citation Number)

(Mailing Address)

(Address of Violation)

(City, State, Zip Code)

(Telephone Number)

(Fax Number - Optional)

Please include a copy of the specific order, citation, decision, or determination being appealed.

Statement of the appellant's legal existing interest in the property, right or entitlement of the subject order, citation, decision, or determination being appealed

Briefly describe the specific order, citation, decision, or determination being appealed:

Statement of the relief sought:

Reasons why such relief should be granted:

I declare under penalty of perjury that the facts stated in this appeal are true of my own knowledge, except as to matters which are not within my knowledge and are not of public record, and as to those matters I believe the facts stated to be true.

Executed at _____ on _____
(City and State) (Date)

(Signature of Appellant)

City Manager's Office
Attn: Jeancen Cervantes
2600 Fresno Street, Rm. 2064
Fresno, CA 93721-3601
Phone: (559) 621-7766
Fax: (559) 621-7776

APPENDIX E

TABLE OF REFERENCED CODE SECTIONS

<u>Code Section</u>	<u>Description</u>	<u>Page</u>
FMC § 12-1601	Title	2
FMC § 12-1602	Intent and Purpose	2, 3
FMC § 12-1617	Historic Resource Permit Review Process	3
FMC § 12-1618	Historic District Permit Review Process	3
FMC § 12-1619	Heritage Property Permit Review Process	3
FMC § 12-1626	Minimum Maintenance	4, 5, 6
FMC § 12-1628	Civil and Criminal Penalties	5, 14
FMC § 1-308	Administrative Citations and Penalties	8, 9, 15
FMC § 1-407	Filing a Notice of Appeal	9, 10
FMC § 1-507	Recovery of Penalties	14, 15



REPORT TO THE HISTORIC PRESERVATION COMMISSION

AGENDA ITEM NO. VID
HPC MEETING: 07/25/2011

July 25, 2011

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management Department

APPROVED BY

DEPARTMENT DIRECTOR

BY: KARANA HATTERSLEY-DRAYTON
Secretary
Historic Preservation Project Manager

SUBJECT: SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT: WHAT IS IT AND
HOW DOES IT DIFFER FROM CEQA?

1. Protocols for Federally Funded Reviews Pursuant to Section 106 of the National Historic Preservation Act and Its Implementing Regulations, Title 36, Part 800 of the Code of Federal Regulations.
 - a) Senior Paint, Minor Rehabs and Lead Paint Grant Projects Reviewed Under the City's Certified Local Government (CLG) Agreement.
2. Section 106 Evaluations That Require(d) SHPO Review:
 - a) Historic Property Survey Report for the California Products Company Site, 3000 E. Butler Avenue, Fresno, 27 August 2010.
 - b) Historic Property Survey Report for the Renaissance at Santa Clara Residential Development Project, Fresno, 4 February 2011.
 - 1) Programmatic Agreement with the SHPO and the Advisory Council on Historic Preservation for Sub-Surface Deposits.
 - c) Section 106 Evaluation and Historic Property Survey Report for the Hotel Fresno, 1257 Broadway, Fresno, 18 March 2011.
 - d) Historic Property Survey Report for the Lowell Development Project, 415 N. Calaveras Street, Fresno, 9 June 2011.
 - e) Section 106 Evaluation and Historic Property Survey Report for the Droge Building 802 Van Ness Avenue, Fresno 8 July 2011. (Revised from December 2, 2010)

RECOMMENDATION

This agenda item is intended as a workshop for informational purposes.

EXECUTIVE SUMMARY

The City of Fresno annually receives grant funds through the Department of Housing and Urban Development (HUD) that help to underwrite a series of community programs. For projects that may impact historic and/or cultural resources, the use of federal funds (or a federal permit) triggers Section 106 of the National Historic Preservation Act. The Code of Federal Regulations (CFR) Title 36, Part 800-

--Protection of Historic Properties--- includes protocols that address consultations with various agencies, the identification of potential historic resources, and assessment of effects to any historic properties. Unlike the California Environmental Quality Act (CEQA), which is silent on the need for historic surveys, the protocols under federal review are quite explicit.

The City of Fresno as a Certified Local Government (CLG) in an agreement with the California State Office of Historic Preservation (OHP), has a signed Programmatic Agreement (PA) with both the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) that allows the City to conduct Section 106 reviews on minor HUD funded rehabilitation projects, such as those in the Senior Paint Program and the Neighborhood Stabilization Program, without further review by the SHPO. Projects, however, that entail ground disturbance, new construction, and/or potential demolition, require a fuller review and are submitted to the SHPO for concurrence. For these larger projects City Staff, or a qualified consultant, prepares a Historic Property Survey Report (HPSR) that not only evaluates above ground resources within an Area of Potential Effects (APE) but also includes Native American consultation and occasionally archaeological investigations.

It is important to note that the eligibility of a property to the National Register of Historic Places is the only concern for the State Office of Historic Preservation for these HUD funded projects. However, a resource which is not eligible for listing on the National Register may be a resource eligible for Fresno's Local Register of Historic Resources. Tonight's agenda item(s) are informational and are presented as a workshop.

Attachments: Exhibit A - "Section 106 Reviews, City of Fresno 2010-July 2011," Prepared for the Historic Preservation Commission 25 July 2011 by Karana Hattersley-Drayton. *(Compilation of federal regulations, sample HUD reviews prepared under the City's PA and Historic Property/ Architectural Survey Reports).*